

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOHN ENGEL, PAMELA S. EVANS, NORMAN  
CHMIELEWSKI, CLAUDIA CHMIELEWSKI,  
LAWRENCE WITUCKI, SALLY WITUCKI,  
GEORGE R. PHILLIPS, DELORES LIJEWSKI,  
JOSEPH GWIZDALA, JR., and IRENE  
GWIZDALA,

UNPUBLISHED  
January 21, 2003

Plaintiffs-Appellants,

v

WILLIAM ROSEBUSH, JAMES KOSKI, DAN  
WYANT, and CULVER CREEK  
INTERCOUNTY DRAIN BOARD,

No. 236494  
Bay Circuit Court  
LC No. 01-003199-AW

Defendants-Appellees.

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Before: Cooper, P.J., and Bandstra and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendants' motion for summary disposition and dismissing the case with prejudice. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs filed suit alleging that a petition seeking repair of the Culver Creek Intercounty Drain was invalid because it was not signed by at least fifty percent of the property owners in the drain district as required by MCL 280.192. The complaint alleged that defendants were not authorized to initiate a drain project or to enter onto plaintiffs' lands to initiate a drain project except pursuant to a valid petition. Plaintiffs sought a ruling that the proceedings were void *ab initio*, and sought to enjoin defendants from engaging in activities pursuant to the petition, including entering upon private lands.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(4), (C)(8), and (C)(10). Defendants acknowledged that the drain board had passed a resolution to the effect that no further action would be taken on the petition because it lacked the requisite number of signatures. Defendants argued that because no actual controversy existed the trial court lacked subject matter jurisdiction to enter a declaratory judgment, and that no further action was necessary. The trial court granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(8) on the grounds that plaintiffs did not allege that any injury resulted from any

trespass, and that defendants acknowledged the petition was invalid. In its final order the trial court granted summary disposition in favor of defendants, dismissed the case with prejudice, and awarded defendants costs in the amount of \$150.<sup>1</sup>

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Plaintiffs argue the trial court erred by granting summary disposition in favor of defendants. Plaintiffs assert they were entitled to summary disposition on the issue of the validity of the petition, and contend that even if summary disposition is not entered in their favor on the issue of the validity of the petition, the trial court's order dismissing the case with prejudice should be set aside because it leaves them without a remedy in the event that defendants decide to proceed again on the invalid petition. We disagree and affirm the trial court's final order. Plaintiffs' complaint did not allege that defendants' finding that the drain project was necessary was not supported by the requisite evidence. Rather, the complaint sought a ruling that the proceedings were void *ab initio* because the petition did not carry the requisite number of signatures. Plaintiffs' complaint in effect sought a declaratory ruling that the petition was invalid. A circuit court may issue a declaratory judgment in "a case of actual controversy." MCR 2.605(A)(1). An actual controversy exists if a declaratory judgment is necessary to guide the plaintiff's actions in order to safeguard the plaintiff's legal rights. *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 55; 620 NW2d 546 (2000).

In their motion for summary disposition defendants agreed with plaintiffs that the challenged petition was invalid and would not support any further action on the drain project. Under the circumstances the trial court was not required to determine the validity of the petition; thus, plaintiffs' complaint presented no actual controversy to the trial court. The trial court correctly granted summary disposition in favor of defendants. MCR 2.116(C)(8). Furthermore, contrary to plaintiffs' assertion, the trial court's order dismissing the case with prejudice did not leave them without a remedy. Plaintiffs' contention that an order dismissing the case without prejudice was necessary to protect their right to bring suit again should defendants decide to proceed on the invalid petition is based on speculation and did not present an actual controversy to the trial court. *Id.*

Affirmed.

/s/ Jessica R. Cooper  
/s/ Richard A. Bandstra  
/s/ Michael J. Talbot

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<sup>1</sup> The trial court signed a prior order that did not specify the dismissal was with prejudice, and did not award costs to defendants.